

IN THE MATTER OF ARBITRATION BETWEEN

Support Personnel at Park (SPARK)	DECISION AND AWARD
St. Louis Park, Minnesota	
Union	
and	Selection for Position as
	Grade Level Coordinator
	Karen Robb, Grievant
Independent School District No. 283	
St. Louis Park, Minnesota	
Employer/District	BMS Case No. 06-PA-383
	Date of Award: June 26, 2006
	Arbitrator: James L. Reynolds
Date and Place of Hearing:	March 2, 2006
	Offices of the Employer
	St. Louis Park, Minnesota
Date of Receipt of Post Hearing Briefs:	May 22, 2006
Date of Receipt of Reply Briefs:	June 2, 2006

APPEARANCES

For the Union:	Bruce P. Grostephan, Esq. Peterson, Engberg & Peterson 700 Old Republic Title Building 400 Second Avenue South Minneapolis, Minnesota 55401-2498
For the Employer:	Joseph E. Flynn, Esq. Knutson, Flynn & Deans 1155 Prairie Centre Drive, Suite 10 Mendota Heights, Minnesota 55120

ISSUE

1. Is the grievance arbitrable?
2. Did the District violate the Collective Bargaining Agreement by not selecting the Grievant to fill an open position of Grade Level Coordinator?
If so, what shall the remedy be?

WITNESSES TESTIFYING

Called by the Union

Karen Robb, Grievant
Discipline Assistant
St. Louis Park Junior High School

Brenda Klinepier,
Career and Technical Education Assistant
SPARK Grievance Committee Chair

Steve Tomasko,
Security Monitor
St. Louis Park Senior High School

Kirsten Christensen,
Discipline Assistant
St. Louis Park Junior High School

Called by the Employer

Dan Walker,
Assistant Superintendent
St. Louis Park School District

Clarence Pollack,
Assistant Principal
St. Louis Park Senior High School

Stacy Collins,
Director of Students
St. Louis Park School District

JURISDICTION

The issue in grievance was submitted to the Arbitrator for a final and binding resolution under the terms set forth in Article XIX – GRIEVANCE PROCEDURE, of the Collective Bargaining Agreement (Joint Exhibit 1) between the parties, and under the rules of the Bureau of Mediation Service of the State of Minnesota. The Arbitrator was mutually selected by the parties from a list of names of arbitrators submitted to them by the Bureau of Mediation Services. The parties stipulated that the Arbitrator had been properly called. The parties also stipulated that the grievance had been processed through the required steps of the grievance procedure without resolution, and that it was properly before the Arbitrator for a decision. The Arbitrator inquired if the parties had any objection to the decision in this case being offered for publication either by the Bureau of Mediation Services or by the Arbitrator. No objection was raised, and the representative of each

party signed an appropriate release form. At the hearing the parties were given full and complete opportunity to examine and cross-examine witnesses and present their proofs. Final argument was presented through post hearing briefs that were received by the Arbitrator bearing the agreed upon postmark deadline as amended. Subsequently, the parties both filed reply briefs. With the receipt of the reply briefs the record in this matter was closed. The issue is now ready for determination.

STATEMENT OF THE ISSUE

The parties presented somewhat different statements of the issue in this case. The Union framed the issue as:

Did the School District violate the Collective Bargaining Agreement when it denied a promotional position to a qualified internal candidate?

The District framed the issue as:

1. Is the issue raised by Grievant, namely that she was the most qualified candidate for the promotion for which she applied, arbitrable under the terms of the Agreement?
2. Did the School District violate the terms of the Agreement when it appointed a candidate other than Grievant to a vacant position in the School District?

The grievance was filed on September 7, 2005 and alleges a violation of Article XIII, Section 6, Subd. 1, and Article XIII, Section 7 of the Collective Bargaining Agreement.

The District denied the grievance at Level I on September 21, 2005 by stating that it believes that it has the right to determine the best qualified candidate under Article XIII, Section 6, as well as determine the needed qualifications for the job and which candidate best meets those needed qualifications.

The parties deferred a final framing of the issue to the Arbitrator, who, after hearing all the testimony and reviewing the evidence adduced at the hearing determined the issue in this case to be:

1. Is the issue presented in the grievance arbitrable?
2. If the grievance is found to be arbitrable, did the District violate the Collective Bargaining Agreement by not selecting the Grievant to fill an open position of Grade Level Coordinator? If so, what shall the remedy be?

The sections of the Collective Bargaining Agreement which bear on the issue are found in Article IV, **SCHOOL DISTRICT RIGHTS**, Article XIII, **VACANCIES AND TRANSFERS**, Article XIX, **GRIEVANCE PROCEDURE**, and Article XXI, **DURATION**. The relevant language is as follows:

Article IV - **SCHOOL DISTRICT RIGHTS**

Section 1. Inherent Managerial Rights: In compliance with P.E.L.R.A. 179A. 07, Subd 1, the parties recognize that the School Board is not required to meet and negotiate on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion or policy as the ... selection and direction and number of personnel, and that all management rights and management functions not expressly delegated in this Agreement are reserved to the School District.

Article XIII - **VACANCIES AND TRANSFERS**

Section 5. Application of Seniority: Seniority will be considered in the filling of vacancies provided an employee has the qualifications to perform the duties and responsibilities of the position, except in those positions involving a promotion which shall be filled as provided in Section 6 herein. For purposes of this section, a promotion is defined as moving to a classification involving an increase in pay.

Section 6. Promotion Positions:

Subd. 1. In filling any vacancy, the position shall be filled by the School District with the best qualified candidate. In making its

determination the School District shall consider the employee's qualification and seniority with the School District, along with other relevant factors.

* * * *

Section 7. Outside Applicants: The School District reserves the right to fill any position with an outside applicant if no internal candidates apply or if internal candidates do not have the needed qualification for the position.

Article XIX, **GRIEVANCE PROCEDURE**

Section 3. Grievance Definition: A "grievance" shall mean an allegation by a S.S.U. employee or a group of employees resulting from a dispute or disagreement as to the interpretation or application of any term or terms of this Agreement.

* * * *

Section 6. Arbitration:

Subd. 6. Restriction on Arbitrator: The arbitrator shall not have the power to add to, subtract from, or to modify the terms of the Agreement.

Article XXI, **DURATION**

Section 2. Effect: This Agreement constitutes the full and complete Agreement between the School District and S.S.U. representing the student support personnel of the School District. The provisions herein relating to terms and conditions of employment supersede any and all prior Agreements, resolutions, practices, School District policies, rules or regulations concerning terms and conditions of employment inconsistent with these provisions.

FACTUAL BACKGROUND

Involved herein is a grievance, which arose when the Employer awarded an open position of Grade Level Coordinator to an outside candidate rather than the Grievant. The Employer is an independent school district chartered under the laws of the State of

Minnesota. It provides kindergarten through grade twelve education to the students of the District. The Union is the exclusive bargaining representative for those employees classified in accordance with the provisions of Article II, Section 2 of the collective bargaining agreement. The parties have maintained a collective bargaining relationship for many years. The controlling contract entered by the parties as Joint Exhibit 1 became effective on July 1, 2003 and continued in full force and effect through June 30, 2005. The grievance (Joint Exhibit 2) was filed on September 7, 2005. While the grievance was filed after the expiration of Joint Exhibit 1, neither party asserted that the 2003-2005 contract was not controlling or that the contract had been changed since its expiration in any manner relevant to this case. For all relevant times the Grievant was covered by the provisions of the collective bargaining agreement.

At the time of the grievance the Grievant was working as a Discipline Assistant in the Junior High School of the District. She has held that position for approximately 15 years of her tenure with the District. The record of this hearing shows that she received good performance evaluations in the performance of her duties as a Discipline Assistant. The Grievant's major duties as a Discipline Assistant were described in Union Exhibit 1A as follows:

- 25% 1. Process students regarding their behavior, developing a behavior remedy with the student
- 20% 2. Determine if a student is prepared to return to class based on the student's behavior and willingness to cooperate.
- 15% 3. Consult with administrative team, teachers and support staff regarding appropriate steps for dismissal for remainder of day, parent contact, police contact, out-of school suspension, quiet lunch, etc.
- 10% 4. Communicate with staff regarding students' response to discipline intervention and planning.
- 10% 5. Document behavioral interventions on a daily basis and communicate documentation with administrative team.
- 8% 6. Coordinate quiet lunch.
- 5% 7. Address student discipline throughout the building including lunchroom, hallway, classrooms, playground and bus.
- 3% 8. Contact parents regarding student behaviors and re-entry procedures as directed by administrative team.
- 2% 9. Assist in the investigation of thefts, vandalism, specific student violations and emergency situations upon the request of the administration.
- 1% 10. Participate in continuing education and training as related to above duties (e.g. crisis prevention).
- 1% 11. Instruct staff about the discipline area and quiet lunch procedures in the beginning of the year and a [sic] needed throughout the year.
- 12. Maintain knowledge and assist in implementing of Individual Health Plans (IHP's) and or student medication schedule, Individual Education Plans (IEP's) and Behavioral Intervention Plans (BIP's) and Section 504 Plans.
- 13. Assist with clerical duties such as filing of student record materials, mailings, etc.

On August 12, 2005 a Notice of Vacancy (Joint Exhibit 5) was posted for a position of Grade Level Coordinator in the Senior High School of the District. The duties of that position were described in Union Exhibit 2A as follows:

- 60% 1. Monitor student attendance for assigned grade level. To include but not limited to the following:
 - * Responsible for contacting parents/guardians regarding student absences related to new attendance policy and conferencing with parent/guardians regarding reasons.
 - * Responsible for arranging and conducting meetings with parents/guardians, students and appropriate staff regarding attendance and relationship to academic status.
 - * Responsible for working with the student and their parents/guardians on their status with the attendance appeal process.
- 20% 2. Responsible for ensuring that students are in their assigned locations.
- 20% 3. Responsible for addressing minor student discipline for assigned grade level and make decisions regarding appropriate discipline to be assigned. Examples may include but not be limited to: classroom disruptions, hallway and/or lunchroom disruptions, bus violations and incidences that require consequences such as detention, ISS or Saturday School.

The position of Grade Level Coordinator pays more than the position of Discipline Assistant. Accordingly, it is regarded a promotion under the terms of Article XIII of the labor contract.

The District established a selection committee to develop interview questions, conduct interviews of applicants and evaluate their qualifications for the Grade Level Coordinator position. The Grievant applied for the position as an internal candidate. The Employer

also advertised the opening outside the District. Applications from external candidates outside the District were received in response to that advertising, and some were interviewed.

The selection committee conducted interviews on August 26, 29 and 30, 2005. Each of the eight candidates interviewed was asked the questions outlined in School District Exhibit 2. Following the interviews the selection committee members individually rated the candidates based on their responses to the questions, education, experience and other factors. The ratings resulted in the following top three candidates in the judgment of the selection committee members.

1. Kamau Larry
2. Shelli Streeper
3. Karen Robb

The record of this hearing shows that minority status entered into the considerations of the members of the selection committee. The record further shows the following in regard to internal/external standing and minority status of the top three candidates as determined by the selection committee:

1. Mr. Larry, an external candidate, is a black male.
2. Ms. Streeper, an external candidate, is a white female.
3. Ms. Robb, an internal candidate, is a white female.

Mr. Larry was subsequently offered the position and accepted. Ms. Robb was advised that she had not been selected, and that the selection committee felt that Mr. Larry was a better “fit”.

Upon receiving that notification Ms. Robb complained to the Union. The Union conducted an investigation and determined that the instant grievance should be filed. The Union filed the instant grievance on Ms. Robb's behalf on September 7, 2005. It proceeded through the required steps of the grievance procedure without resolution and was heard in arbitration on March 2, 2006.

POSITION OF THE PARTIES

Position of the Union

It is the position of the Union that the grievance should be sustained; the Grievant awarded the position of Grade Level Coordinator and provided back pay. In support of this position the Union offers the following arguments:

1. The Grievant, Karen Robb, is qualified for the position of Grade Level Coordinator.
2. The Employer's justification for selecting Mr. Larry violated the contract. During the grievance procedure the Employer stated that his selection was based on "affirmative action". Even though the Employer wanted to hire a minority person for the position, it was not allowed to discriminate against a female based on its own policy of Equal Employment Opportunity described in Union Exhibit 9 and applicable external law.
3. The Language of the Collective Bargaining Agreement supports the Grievant. The position of Grade Level Coordinator is a promotion. Accordingly, Article XIII, Section 5 mandates that it must be filled according to the provisions of Article XIII, Section 6. Subd. 1. That language provides that the position shall be filled with the best qualified candidate, and consideration shall be given to both the employee's qualifications and his/her seniority with the District.

Article XIII, Section 7, provides that the right to fill any position with an outside applicant is reserved to the District only if internal candidates do not have the needed qualifications for the position. The District admitted during the grievance procedure that the Grievant had the qualifications for

the position. At the hearing, however, the District changed its position on her qualifications, but gave no reasonable factual basis for determining that she was not qualified. The District points to the Grievant not having high school experience. Neither the job description nor the job posting for the Grade Level Coordinator, however, make any reference to the need for high school experience. Accordingly, the Grievant was qualified and should be placed in the position.

4. An intent to apply affirmative action was not a valid reason to violate the Collective Bargaining Agreement, Article XIII. Even though the Employer took the position at the hearing that it was not intending to give preference to an African American male, the evidence indicates that it had such bias during the hiring process. That bias violates the District's policies, the Collective Bargaining Agreement, and law. The Employer testified that it did not know if minority students felt comfortable with Ms. Robb or not because she is white. Ms. Robb, on the other hand, testified that the students know and understand that she does not see color, only behavior.

Position of the Employer

It is the position of the Employer that the grievance should be denied. In support of this position the Employer offers the following arguments:

1. Decisions regarding the qualifications of an employee are within the discretion of the School District and are not subject to the jurisdiction of the Arbitrator. The School District has preserved its inherent managerial right to select an employee to a position which constitutes a promotion. Article XIII, Section 6 clearly provides that in filling any promotion position the best qualified candidate shall be selected. In judging those qualifications the District shall consider the employee's qualifications, seniority and other factors. This judgment is not subject to arbitrable review.

Article IV of the labor contract also provides that selection of employees is a reserved management right not subject to arbitration.

Article XIII, Section 7 further reserves the right to fill any position with an outside applicant if no internal candidates have the needed qualifications. The determination of what qualifications are needed and relevant, however, is reserved to the District. Therefore, if the School District, in its discretion, decides that the internal applicant does not have the needed qualifications, it may hire externally.

In particular, it is a well established principle of arbitration that a determination as to an employee's ability to fill a job is a management decision and that the determination of an employee's qualifications can be challenged only on the basis that it was arbitrary, capricious, discriminatory, clearly wrong, made in bad faith or contrary to the contract. In applying this standard, the Union has not shown that the decisions of the School District made with respect to the qualifications needed of a Grade Level Coordinator were not carefully determined, or were arbitrary and capricious, or that they were inappropriately applied. Absent abuse of discretion, an arbitrator's judgment should not be substituted for that judgment specifically reserved to the School District.

2. The grievance must be denied on its merits as there had been no violation of the terms of the Collective Bargaining Agreement. The contract does not require that the most senior applicant be hired for a promotional position. All that is required is a showing by the District that it considered the senior of the Grievant. The District did give consideration to the seniority of the Grievant, but determined that other factors, such as education, training, experience, and responses to interview questions were more pertinent in determining whether she was qualified for the position.

The labor contract allows the District to consider additional qualifications beyond seniority, as it deems appropriate. The Union fails to read Article XIII, Section 7 in context with the entire Agreement. Section 6, Subdivision 1 clearly recognizes that the School District may fill the position with the "best qualified" candidate. Seniority is not required to be given any particular weight.

The Union's interpretation would render meaningless provisions in the Agreement providing the District with discretion to determine the qualifications of a candidate as well as the provisions allowing the District to hire a less senior applicant.

3. Past practice further shows that the District has retained its authority to promote the best qualified candidate, regardless of seniority. The District has shown that a binding past practice exists whereby the District has the right to hire an external candidate deemed best qualified for a position, regardless of seniority. Many positions have been filled over the years using the same process as was used in this case. No grievances have been filed until the instant case. The controlling contract language has not changed in over twenty-five years. The Union has had many years of opportunity to challenge the practices, but they have not.

4. The Union has not met its burden of showing that the District's selection of the best qualified candidate was arbitrary or capricious. The District prepared a fair and neutral application process. Each applicant was subject to the same procedures and examined by the selection committee on the same criteria. The District found that the Grievant did not have significant education in the areas pertinent to the position. Additionally, while she had experience in the junior high school level, she admittedly had no experience working with high school students. She did not exhibit the immediate skills to handle the job without further training. The District did not prejudge candidates based upon an unfair preference. The District presented credible evidence that its decision was not based on any type of racial preference. The District conducted an extensive and fair application process wherein the Grievant was found not to have the qualities desired of the position. The decision was not arbitrary, capricious or discriminatory. Accordingly, there is no violation of the Agreement.

ANALYSIS OF THE EVIDENCE

A threshold question to be resolved in this case is whether or not the issue presented in the grievance is subject to arbitration. The Employer argues that the grievance is not arbitrable because determination of qualifications needed in a job, and the extent an applicant possesses those qualifications is reserved to the District under the labor contract. Article IV – School District Rights, provides at Section 1 that the Employer is not required to meet and negotiate on matters of inherent managerial policy including “selection of personnel”. It is a well established arbitration principle, however, that interpretation and application of such a general contract provision is limited by specific provisions that may be found elsewhere in the labor agreement. The parties have recognized that principle by including in Article IV, Section 1 a provision that “all management rights and management functions not expressly delegated in this Agreement are reserved to the School District”. (Emphasis supplied). Accordingly, the selection of

personnel would be deemed a reserved management right, not subject to arbitration, if no language expressly delegates personnel selection to other provisions of the contract. Such delegation is found, however, in Article XIII, Section 5, Section 6, and Section 7.

The Employer argues that determination of qualifications needed for a covered position is reserved to the District. Article XIII does not speak at all to the matter of determining what qualifications are needed for a position. Accordingly, it is reasonable to find that determining the qualifications needed for a position is a reserved management right. Indeed, the Union in this case does not argue that it has any role in determining what the qualifications for the position of Grade Level Coordinator should be. Even if the Union had made such an assertion, it would not stand in the face of the clear contract language found in this case and the precedent of years of looking solely to management to determine position qualifications.

The grievance in this case, however, involves more than simply determining the qualifications for the Grade Level Coordinator position. It involves the determination of whether or not the Grievant possesses the qualifications required, the consideration of her seniority, and whether or not the School District properly applied the “best qualified” standard specified in Article XIII, Section 6, Subd. 1. These are all matters covered by specific contract provisions found in Article XIII.

A “grievance” is defined in Article XIX as “a dispute or disagreement as to the interpretation or application of any term or terms of this Agreement”. The specific

provisions of Article XIII cited in the preceding paragraph are clearly terms of the Agreement. Accordingly, the grievance is arbitrable. The general reserved rights language of Article IV simply does not trump the specific provisions of Article XIII that are involved in this grievance.

As to the merits of the grievance the controlling contract language is found in Article XIII as noted, *supra*. There is no question that the Grievant in this case has a good work record. The District readily admits that she is well qualified in her current position as a Discipline Assistant in the Junior High School. What needs to be resolved is whether or not the District violated Article XIII in selecting an external applicant over the Grievant for the open position of Grade Level Coordinator. The controlling contract language and the evidence adduced at the hearing compel a finding that it did not.

The first aspect of the issue to be examined is the Grievant's qualifications for the position of Grade Level Coordinator. Assessing an employee's qualifications is generally a matter for management to decide. Arbitrators will not usually substitute their judgment for that of management unless management is found to be arbitrary, capricious, or clearly wrong in its determination. In this case the District followed an orderly process of assessing the qualifications of the applicants for the job of Grade Level Coordinator. It developed a set of questions to be asked of all applicants, it empanelled a committee of evaluators who were knowledgeable of the requirements of the position. There is little, if anything, to fault in the process used to make the final selection. The selection committee did not think the Grievant answered the situational questions satisfactorily. Additionally,

the committee took note that her academic work was not in a field related to the position of Grade Level Coordinator. They also noted that she did not have experience in a High School setting. These considerations were appropriate in determining whether or not the Grievant was qualified to fill the Grade Level Coordinator position. Accordingly, there is no showing that the District was arbitrary, capricious, or clearly wrong in its determination that the Grievant was not qualified to fill the open position of Grade Level Coordinator.

The labor contract also provides for giving consideration to the seniority of the Grievant. It is not disputed that the Grade Level Coordinator position would have been a promotion for the Grievant. As such the provisions of Article XIII, Section 6 apply. Subdivision 1 clearly states at the outset that promotional positions shall be filled with the best qualified candidate. “Best qualified” does not mean that seniority would be ignored, however. To the contrary, the next sentence in Subdivision 1 states that the “School District shall consider the employee’s qualification and seniority with the School District, along with other relevant factors.” (Emphasis supplied). Clearly seniority must be considered. The language does not define, however, the weight to be given to seniority vis-à-vis qualifications or other relevant factors. Had the parties intended that seniority would carry some specific weight or be a super-ordinate factor they could have written such language into the contract. For example, they could have written that the most senior employee possessing the qualifications of the position would be selected. Since they did not provide for that, it must be determined that was not their intention. Accordingly, it

must be determined that qualifications, seniority and other relevant factors are to be given the respective weight reasonably determined by the School District.

The Union argues that the Grievant was advised by the District in the course of the grievance procedure that she was qualified to perform the duties of the Grade Level Coordinator position. The District asserts that it only found that the Grievant had sufficient qualifications to be considered for the interview process and that her qualifications could not be determined until that process was completed. The testimony entered into the record of this case supports the District's position. The purpose of the interviews was to determine qualifications of all the candidates applying. The record shows that an objective interview process was used to assess qualifications. There is nothing in the record to suggest that the Grievant was judged to be qualified for the Grade Level Coordinator position after the interviews were completed. The Union's claim that the Grievant was judged by the District to be qualified for the Grade Level Coordinator position is misplaced. The record simply does not support the Union's claim that the District made such a determination. Accordingly, filling the position with an outside applicant is not barred by Article XIII, Section 7.

The Union claimed that the District hired Mr. Larry because he is an African American. If that was the only basis of his hiring, it would be very troubling, indeed. The Grievant testified without challenge that students regarded her as seeing only behavior and not color. There was no evidence presented that students of color would relate any better to an African American male than to the Grievant in the disciplinary process often involved

in the performance of the described duties of the Grade Level Coordinator. The District, on the other hand, testified that it regarded Mr. Larry's race to be desirable in having more people of color in administrative positions within the District. While having more minority representation in District administration may be desirable, it cannot be used as a significant selection criteria unless it can be shown to be a bonafide occupational requirement. No such showing was made in this case. The record also does not show, however, that the District placed much weight on the race or gender of the applicants. Of the three finalists, one was a black male, two were white females. The record shows that the selection was primarily based on the education, experience and response to interview questions by the applicants. The extent, if any, that race entered into the decision did not rise to the level necessary to overturn the selection made by the District.

In reviewing the controlling language of Article XIII, in its entirety, it is noted that Section 5 provides for filling vacancies that are not regarded as promotional. For such non-promotional vacancies, seniority will be considered provided the employee has the qualifications to perform the duties and responsibilities of the position. It is noted that no reference is made to the relative weight to be applied to seniority and to qualifications. It is also noted that no reference is made in this Section to the "best qualified" candidate. In this case it is not disputed that the Grade Level Coordinator position was a promotional position for the Grievant. Accordingly, Section 5 of the labor contract does not apply here.

In Section 6, Subdivision 1 deals with filling positions that are promotional. The language of that Section provides at the outset that the position will be filled with the “best qualified” candidate. By comparing the language of Section 5 to that found in Section 6 it is apparent that the parties intended in Section 6 that promotional positions be filled with the “best qualified” candidate. The “best qualified” standard is not found in Section 5, but it is clearly stated in Section 6. The “best qualified” standard, however, needs to be read along with the remaining language of Section 6 which deals with the employee’s qualifications, seniority, and other relevant factors. Section 6 clearly requires the consideration of seniority and other factors. Such language compels a finding that employee qualifications do not trump everything else in determining the “best qualified” candidate. This Section mandates that meaningful consideration be given to seniority when filling promotional positions. Additionally, other factors need to be considered. The relative weight to be assigned to qualifications, seniority and other factors in determining the “best qualified” candidate, however, is not specified in the contract. The language requires that the District act in a reasonable and objective manner in determining the “best qualified” candidate. Meaningful consideration must be given to educational background, work experience, responses to interview questions, and seniority. Should the Employer not give meaningful consideration and weight to seniority its decision as to the “best qualified” candidate would reasonably be found to be arbitrary or capricious. Seniority is clearly deemed by the parties to be important. Failure to give meaningful consideration to it would expose the Employer’s selection decision to being overturned. It must be noted, however, that the clear language of Section 6 does not compel the District to select the most senior employee applying simply because of his/her

seniority. In this case the process used by the District in assessing candidates was reasonably objective and even-handed to both internal and external candidates. The District's evaluation that the Grievant was not the "best qualified" candidate cannot be overturned simply because of her seniority.

In Section 7 the contract provides that an open position may be offered to an outside applicant if internal candidates do not have the needed qualifications for the position. As stated earlier, management has the right to reasonably determine required qualifications for a position and assess the extent applicants meet them. In applying this section, the District has a duty to assess the qualifications of internal candidates, and to reject them only if it is reasonably shown that they do not have the needed qualifications for the position. Such a showing can be made through an objective review of academic preparation, work experience, and responses to reasonable standardized interview questions. If an internal candidate is shown to possess the needed qualifications by this process then Section 7 compels the District to offer the position to him/her. If the process reasonably shows the internal candidate does not possess the needed qualifications for the position then the District is free to offer the position to an outside candidate. In this case, the record shows that the Grievant did not possess the needed qualifications for the position of Grade Level Coordinator, and the District was free to offer it to an outside candidate.

A reading of these sections clearly shows that the parties did not intend seniority to trump qualifications and other factors in the selection process. Similarly, education, experience

and other factors do not trump seniority. Seniority must simply be considered along with those other matters. The respective weight to be assigned to each is not, however, specified in the Agreement, and cannot be directed by an Arbitrator.

Article XIX, Section 6 provides that the Arbitrator lacks authority to add to, subtract from, or to modify the terms of the agreement. To sustain this grievance, the Arbitrator would have to assign a meaning to the provisions of Article XIII that is clearly not in the language. Accordingly, and for all the above cited reasons the Arbitrator must deny the grievance.

IN THE MATTER OF ARBITRATION BETWEEN

Support Personnel at Park (SPARK)
St. Louis Park, Minnesota
Union

and

Independent School District No. 283
St. Louis Park, Minnesota
Employer/District

DECISION AND AWARD

Selection for Position as
Grade Level Coordinator

Karen Robb, Grievant

BMS Case No. 06-PA-383

Date of Award: June 26, 2006

Arbitrator: James L. Reynolds

AWARD

Based on careful consideration of all the testimony and exhibits entered into the record of this hearing, the grievance and all remedies requested are denied.

Dated

James L. Reynolds
Arbitrator